

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

| | | |
|--|---|--------------------|
| KELLIE D. JOHNSON, Wife of |) | |
| JIMMY D. JOHNSON, Deceased, |) | |
| |) | |
| Plaintiff, |) | |
| vs. |) | NO. CIV-08-1235-HE |
| |) | |
| MICHAEL J. ASTRUE, Commissioner |) | |
| of the Social Security Administration, |) | |
| |) | |
| Defendant. |) | |

ORDER


Plaintiff Kellie D. Johnson seeks judicial review of a final decision of the Commissioner of the Social Security Administration denying her deceased husband's application for supplemental security income ("SSI") benefits. Consistent with 28 U.S.C. § 636(b)(1)(B), the case was referred to U.S. Magistrate Judge Valerie K. Couch, who recommends that the Commissioner's decision be reversed and the case remanded for immediate award of SSI benefits. The magistrate judge found, among other things, that the administrative law judge's residual functional capacity findings were not supported by substantial evidence and that, in the circumstances of this case, an immediate award of benefits is warranted.

Having failed to object to the Report and Recommendation, the defendant has waived his right to appellate review of the factual and legal issues it addressed. United States v. One Parcel of Real Property, 73 F.3d 1057, 1059–60 (10th Cir. 1996); *see* 28 U.S.C. § 636(b)(1). Accordingly, the court adopts the Report and Recommendation [Doc. No. 25], **REVERSES**

the final decision of the Commissioner, and **REMANDS** the case for immediate award of SSI benefits consistent with this opinion.

IT IS SO ORDERED.

Dated this 13th day of May, 2010.



JOE HEATON
UNITED STATES DISTRICT JUDGE